IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 1225 OOF 2001

Bahli Naterwalla .. Petitioner

versus

Cavas M. Titina & ors. .. Respondents

...

Mr.M.U. Pandey for the petitioner.

None for the respondents.

CORAM : D.G. KARNIK, J

DATED : 14th December 2006

P.C.:

1. This civil revision application is directed against the order dated 5th October 2000 passed by the learned Judge of the City Civil Court Mumbai holding that it has the jurisdiction to entertain and try the suit.

2. Respondent nos.2 to 9 are the trustees of the trust known as "Zorastrian Building Fund Trust" and own the building known as Batliwala Villa. Respondent no.1 is a tenant of respondent nos.2 to 9 occupying a tenement situated on the first floor of the trust building. Petitioner no.1 is another tenant occupying some other tenement in the building. It appears that there is some dispute between the petitioner and the respondent no.1 regarding use of a toilet block in the building. Respondent no.1 therefore filed a suit against the petitioner for an injunction restraining him from obstructing the respondent no.1 from using the toilet block and for other ancillary reliefs. Respondent nos.2 to 9 being the landlord of the property were joined as formal parties to the suit.

3. The petitioner objected the jurisdiction of the court and filed an application praying that an issue of jurisdiction of the Court be framed and be tried as a preliminary issue. The petitioner contended that in view of section 28 of the Bombay Rents and Lodging Houses Rates Control Act 1948 (for short "Bombay Rent Act"), the Small Causes Court had the exclusive jurisdiction to entertain and try the suit and the City Civil Court had

no jurisdiction to entertain and try the suit.

4. Section 28 of the Bombay Rent Act reads as follows :-

> **"Jurisdiction of Courts -**
>
> (1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction.
>
> (a) in Greater Bombay, the Court of Small Causes Bombay;
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> (aa) in any area for which, a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1887, such Court and
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> (b) elsewhere, the Court of the Civil Judge (Junior Division) having

> jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply for between a licensor and a licensee relating to the recovery of the licence fee or charge and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and (subject to the provisions of sub-section (2), no other Court shall have jurisdiction to entertain any such suit, proceedings or application or to deal with such claim or question."

5. It can be seen that only a suit between a landlord and a tenant relating to the recovery of rent

or possession of any premises to which Bombay Rent Act is applicable would be triable by the Small Causes Court and no other court would have the jurisdiction to entertain and try such a suit. The present suit is not between a landlord and a tenant relating to recovery of rent or possession. It is the suit between the two tenants both of whom claim certain rights to use the toilet block. The landlord has been joined only as a formal party to the suit. No relief is claimed against the landlord. The suit also does not relate to the recovery of rent or possession. In the circumstances, the suit is clearly outside the scope of section 28 of the Bombay Rent Act. It therefore cannot be said that the Small Causes Court has the exclusive jurisdiction to entertain and try the suit. The trial court was right in holding that it had the jurisdiction to entertain and try the suit.

6. Revision Application is accordingly dismissed with costs.

(D.G. KARNIK, J)